

**OPINION
69-450**

November 28, 1969 (OPINION)

Mr. Wallace D. Berning

Assistant State's Attorney

Ward County

RE: Taxation - Per Capita School Tax - Cancellation

This is in reply to your letter dated November 20, 1969, with regard to the application of section 57-02-21 of the North Dakota Century Code. You call our attention to the provision of subsection 4 of section 57-02-21 of the North Dakota Century Code providing:

Any person exempt from personal property taxation under this section and any dependent of such person shall also be exempt from the per capita school tax and such tax if levied shall be cancelled by the county auditor."

You state that the specific question is can the county auditor cancel the property taxes as well as the per capita school taxes. You note that subsection 3 of section 57-02-21 does not explicitly give the county auditor the authority to do this, and that subsections 1 and 2 explicitly give the county auditor that authority. Your letter states further that if it is construed that she does not have authority to cancel the personal property taxes under subsection 3, then they will, of course, have to be handled as abatements when the factual situations are under subsection 3.

Subsections 1 and 2 of section 57-02-21 of the 1969 Supplement to the North Dakota Century Code provide for an exemption of all of the personal property of the persons mentioned therein from taxation. Insofar as all of their personal property is exempt from taxation there is no logical reason why their names should appear upon the tax roll. These subsections provide that the procedure in granting the exemption is for the county auditor to strike the names from the tax roll.

Subsection 3 of section 57-02-21 of the 1969 Supplement to the North Dakota Century Code does not provide for exemption of all of the personal property of the persons mentioned therein from taxation. It merely provides that the "household goods, clothing and musical instruments" of the persons named therein shall be exempt from taxation. Assuming they own personal property other than household goods, clothing and musical instruments, such personal property would be subject to taxation and in such case should appear on the tax roll. The procedure for granting an exemption of this particular personal property is specified as: "The assessor shall attach such statement to the assessment sheet." On such basis, when the assessment sheet reaches the county auditor she will have the information contained on the assessment sheet, plus the statement that justifies the exemption. If the only property listed on the assessment sheet is household goods, clothing and musical

instruments, there will be nothing to list on the tax roll. If there is personal property other than household goods, clothing and musical instruments, there will be property listed for taxation though the household goods, clothing and musical instruments would not be included therein.

Thus, under subsections 1 and 2 an exemption of certain persons from personal property taxation is given. Under subsection 3, an exemption of certain property from personal property taxation is given. It is conceivable that a person owning only household goods, clothing and musical instruments would, therefore, not have any personal property tax to pay.

There should be no necessity of handling the subsection 3 exemption by abatement procedures, insofar as the tax lists as made up should not include the household goods, clothing and musical instruments and, therefore, there is no tax assessed on such property.

HELGI JOHANNESON

Attorney General